

## **FREQUENTLY ASKED QUESTIONS ABOUT OPEN AND PUBLIC MEETINGS**

**1. Where is the state law on open and public meetings?**

Utah Code 52-4-1 through 52-4-9.

**2. What "notice" of a public meeting is required under Utah law?**

An annual notice meeting schedule if meetings are held regularly over the course of a year **and** 24 hours' public notice of the: (a) agenda, (b) date, (c) time and (d) place of each meeting.

Public notice is satisfied by posting a notice of the meeting at the principle office of the public body **and, until April 2008**, providing notice to at least one newspaper of general circulation within the geographic jurisdiction. After April 2008, notice **MUST** be provided to the "Utah Public Notice Website." Public bodies will no longer need to provide notice to newspapers after April 2008.

Emergency meetings may be held with notice as "practicable" only following an attempt to notify all board members and receive affirmative votes for the meeting from the members. Notice must include the time, place of the meeting and topics to be considered. Notice of electronic meetings must state if public comment will be taken.

**3. Are all school board meetings public meetings?**

No, chance and social meetings are exempted; meetings may be closed for legitimate designated purposes (see 53A-4-7.5); and the definition of "public meeting" does not include a meeting convened for implementation of administrative matters not requiring formal action **and** for which no public funds are appropriated in the course of the meeting.

**4. Must the agenda include all items of discussion in the meeting?**

The agenda must be sufficient to apprise the public of the intended discussion. Specific is better than general. Courts are not sympathetic to "gimmicks" intended to circumvent adequate notice of public meetings. A public body may discuss, at the discretion of the chair, an issue raised by public comment. No action or vote may be taken.

**5. For which designated purposes are closed meetings legal?**

- (a) "the discussion of the character, professional competence, or physical or mental health of an individual;
- (b) "strategy sessions to discuss collective bargaining;"
- (c) "strategy sessions to discuss pending or reasonably imminent litigation;
- (d) "strategy sessions to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property and prevent completion of the transaction on the best possible terms for the public entity;
- (e) "strategy sessions to discuss the sale of real property that would disclose designated information, prevent the public entity from completing the sale on the best possible terms and when the terms of the sale will be publicly disclosed before the public body approves the sale;
- (f) "discussion regarding the deployment of security personnel, devices, or systems;
- (g) "investigative proceedings regarding allegation of criminal misconduct." (emphasis added throughout).

**6. How specific must the description for the purpose of the closed (executive session) meeting be?**

Specificity is not required; balance is necessary between informing the public about executive session activities while not compromising the privacy interests of those whose business is discussed.

**7. Can board action be taken in a closed meeting?**

No, the Utah statute would have to expressly allow for this—and it does not. Where action is taken in an open session, after a closed session, the motion need not present sensitive issues discussed in the closed session. A motion to discharge a named teacher “for reasons authorized by law” has been considered adequate.

**8. Must public meetings be recorded?**

Yes. Written minutes or a digital or tape recording shall be kept of all open meetings. The recording shall include:

- (a) date,
- (b) time,
- (c) place,
- (d) names of members present and absent;
- (e) substance of all matters proposed, discussed or decided,
- (f) record, by individual, of votes taken,
- (g) names of all citizens who attended and substance of their testimony, and
- (h) any information that a member requests be included in the minutes.

**9. Are the minutes a public record?**

Yes. They may, however, be protected as a draft until approved by the members within a reasonable time after the meeting. They must also be converted to written minutes within a reasonable time **upon request**. Minutes must be properly labeled with date, time and place.

**10. May someone in the audience record the meeting?**

Yes, as long as the recording “. . . does not interfere with the conduct of the meeting.”

**11. What about a record of closed meetings?**

If the purpose of the closed meeting is to discuss character or the character or competence of an individual or the deployment of security devices, the presiding officer need only sign a sworn statement affirming the purpose. A meeting closed for any other purpose requires an electronic recording or detailed written minutes.

**12. What “detail” satisfies the Utah requirement for “detailed written minutes?”**

A recent Attorney General opinion summarized Utah case law to say that “minutes need not be a verbatim transcript, but . . . must be more than the mere place, date, time and names required to be released to the public. Rather, the minutes should be detailed enough for the appropriate judge to review them in camera to determine the facts of the proceedings, i.e. the substance of what was discussed and what transpired, and to determine the legality of the meeting.”

**13. How is “quorum” defined?**

A simple majority of the membership of a public body.

**14. What if we want to have a closed-meeting interview for an individual to fill a board member position?**

Sorry, interviews to fill an elected position cannot be held in a closed meeting.

**15. If meetings must include the public, must individuals be allowed to make comments or have discussion during the meeting?**

No, public participation in the meetings continues to be a matter within the discretion of the board. Thus, unless bylaws or board rules require it, a board need not receive public comment during its meetings and may confine public discussion to specified subject matters under prescribed limitations. Rules regarding public comment must be content-neutral and boards have the unqualified right to control disruptive conduct. Board members themselves have greater rights to be heard and probably to express themselves forcefully without being excluded from a board meeting.

**16. What is the usual consequence for a violation of this law?**

Actions are usually considered "voidable," or that a court may declare that the action or vote was illegal and must be retaken or discussed again by the body.

**17. What provisions must be made for individuals with disabilities?**

The board must ensure that the disabled may effectively participate in or attend meetings. This obligation would apply whether the disabled person is a member of the board or a member of the public entitled to attend.

**18. Can board meetings be held telephonically or electronically?**

It is hard to imagine how either type of meeting could be held and still allow for public disclosure and discourse. They are not specifically disallowed, but decisions and votes must be discussed and made in public. Additionally, any correspondence (mail, email) from or to board members is public information. Are you prepared to read any of your correspondence in court or have it printed in the newspaper? The better approach is to have a board by-law if such meetings are commonplace. State law requires that a policy be in place before electronic meetings are held.

**19. What is the effect of noncompliance with public meetings laws?**

The general view is that actions taken at a meeting where open meetings law are violated are voidable, not usually invalid. In subsequent court action, courts tend to ignore harmless failure to comply strictly with open meetings laws. Boards are typically allowed, following full compliance with public meeting notice and the law, to reaffirm or reapprove their actions. Open meetings laws may provide other penalties by statute including injunctions against further violations, criminal penalties (Tovar v. State, 978 S.W.2d , TX, 1998—upholding conviction where board president called and participated in an impermissible closed meeting; six month prison sentence, \$500 fine) Knowing and intentional violations may have more draconian consequences. In Utah, it is a Class B misdemeanor to knowingly or intentionally violate closed meeting provisions.

**20. Are prayers or moments of silence allowed at board meetings?**

Courts seem to distinguish Marsh v. Chambers ( 463 U.S. 786) where the U.S. Supreme Court held that prayers before legislative sessions are constitutional. Significant in Marsh was that the legislative chaplain removed all references to Christ after the sectarian nature of his prayers was brought to his attention and (supposedly) the prayer did not advance any one faith or belief. Courts in Coles v. Cleveland Board of Education (171 F.3d 369, Ohio, 1999) and Bacus v. Palo Verde Unified School Dist. Bd. of Educ. (52 Fed. appx.355, California 1998) held that a sectarian prayer is unconstitutional and that a school-board setting is even more coercive to participating students than other school activities. Some boards of education reconcile the board's desire to formalize the beginning of their meetings (or pray) with the constitutional prohibition by designating a "reverence" or "inspirational thought" at the beginning of the meeting. The terminology seems to matter to the courts.

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# AFFIDAVIT

The \_\_\_\_\_, at its regularly scheduled meeting on \_\_\_\_\_, met in an Executive Session for the purpose of discussing \_\_\_\_\_ only.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title